

212047

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**FILING FEE WAIVED**

17 September 2004  
(by express)



Hon. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

SEP 21 2004

Part of  
Public Record

Re: BNSF -- Abandonment Exemption -- in  
Franklin and Webster Counties, NE,  
AB-6 (Sub.-no. 400X);  
Request for 90 day extension of NITU

Action requested on or before  
September 24

Sirs:

Nebraska Trails Foundation (NTF) hereby requests that this Board issue an order extending the Notice of Interim Trail Use (NITU) already issued in this proceeding for ninety (90) additional days, through and including December 23, 2004.

The NITU in this proceeding currently expires on September 24, 2004. See decision served in above docket on March 26, 2004. The parties are actively negotiating a final contract and agreement, but require additional time to arrive at final language on a couple issues, and to circulate the final agreement for necessary approvals and signatures. While this hopefully will occur within the next several weeks, prudence suggests that the parties seek 90 days in order to avoid burdening this Board with another short term extension request. Accordingly, Nebraska Trails Foundation hereby respectfully requests that this Board issue an order extending the NITU by 90 days, through and including December 23, 2004. Counsel for NTF understands that BNSF supports this extension request.

In order to avoid possible jurisdictional challenges arising from an alleged NITU lapse, NTF requests that the Board issue the extension order on or before expiration of the existing NITU (September 24). To facilitate prompt consideration, NTF attaches herewith a copy of the last NITU extension (order served March 26, 2004). In addition, the contact information for BNSF's outside counsel (Lola LaCrosse)

is set forth in the "cc" below.

Respectfully submitted,

  
Charles H. Montange  
for Nebraska Trails Foundation

Att.

cc (w/att). Lola E. Lacrosse, Esq.  
Mellina & Larson, P.C.  
777 Main St., Suite 770  
Fort Worth, TX 76102  
(tel: 817-335-1200; fax: 817-335-1221)  
for BNSF (service by fax transmission)

Ross Greathouse (NTF/NTC)

34592  
DO

SERVICE DATE - MARCH 26, 2004

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 400X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
-ABANDONMENT EXEMPTION-  
IN FRANKLIN AND WEBSTER COUNTIES, NE

Decided: March 24, 2004

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F-Exempt Abandonments to abandon a 19.8-mile line of railroad between milepost 216.95 near Franklin, NE, and milepost 197.15 near Red Cloud, NE, in Franklin and Webster Counties, NE. Notice of the exemption was served and published in the Federal Register on March 5, 2003 (68 FR 10575-76).

By decision and notice of interim trail use or abandonment (NITU) served April 3, 2003, the proceeding was reopened and a 180-day period was authorized for the Nebraska Trails Foundation, Inc. (NTF), and the Lower Republican River Visionaries of Red Cloud to negotiate an interim trail use/rail banking agreement with BNSF for the entire line pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trails use negotiation period under the NITU was scheduled to expire on September 30, 2003, but was extended to March 28, 2004, by decision served September 29, 2003.<sup>1</sup>

On March 19, 2004, NTF filed a request for a 180-day extension of the trail use negotiating period.<sup>2</sup> NTF states that it and BNSF have recently reached an oral agreement in principle at the staff level for the major terms for the railbanking of the above-described rail line, but require further time to

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<sup>1</sup> The April 3, 2003 decision also imposed a public use condition, which expired on October 1, 2003, and two environmental conditions, consisting of the U.S. Fish and Wildlife Service condition and a historic preservation condition. The historic preservation condition was removed by decision served May 8, 2003. The other environmental condition imposed in the April 3, 2003 decision remains in effect.

<sup>2</sup> Because the NITU is scheduled to expire on March 28, 2004, a 180-day extension would run until September 24, 2004.

reduce the agreement to writing and to obtain requisite intra-corporate approvals. NTF states that the additional time is needed to allow completion of the railbanking negotiation and agreement. In a response filed on March 23, 2004, BNSF concurs in the request to extend the trail use negotiating period.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended. An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act.<sup>3</sup> Accordingly, the NITU negotiating period will be extended to September 24, 2004.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NTF's request to extend the NITU negotiation period is granted.
2. The negotiating period under the NITU is extended to September 24, 2004.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

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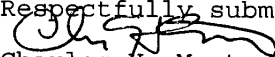
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